

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonja Rucnov	Team: Team # 8	CCRB Case #: 200817104	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/23/2008 2:00 AM	Location of Incident: 199 Bowery Street at Spring Street	Precinct: 05	18 Mo. SOL 5/23/2010	EO SOL 5/23/2010	
Date/Time CV Reported Tue, 11/25/2008 11:46 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/25/2008 11:46 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Famiano	07548	936568	005 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ming yun Cheung	28536	942769	005 PCT
2. SGT Francisco Munoz	04677	930797	005 PCT
3. POM Johnson Lew	20532	928640	005 PCT
4. POM Michael Green	03108	930265	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Famiano	Discourtesy: James Famiano spoke obscenely to § 87(2)(b)	

### Case Summary

On November 25, 2009, § 87(2)(b) called the CCRB to file this complaint. On November 23, 2009, § 87(2)(b) went to a club at 199 Bowery Street in Manhattan with friends including Sudershan § 87(2)(b). The police arrived after § 87(2)(b) became involved in a physical altercation. The following allegation resulted:

**Allegation A – Discourtesy:** PO James Famiano spoke obscenely to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant/ Victim:** § 87(2)(b)

- § 87(2)(b)

#### CCRB Statement

On January 9, 2008, § 87(2)(b) provided his CCRB statement (encl. 5d-5f). On November 23, 2008, at approximately 2 a.m., § 87(2)(b) was at a club at 199 Bowery Street in Manhattan with friends including § 87(2)(b), § 87(2)(b) and § 87(2)(b). § 87(2)(b) was on the dance floor of the club when § 87(2)(b) approached him and told him that § 87(2)(b) had been jumped and that they should leave. When § 87(2)(b) and § 87(2)(b) exited the club, there was § 87(2)(b)'s brother, whose name § 87(2)(b) did not know. The brother borrowed § 87(2)(b) phone to call 911.

§ 87(2)(b) then opened an entrance door to the club and saw § 87(2)(b) surrounded by five to eight bouncers that were yelling and cursing at § 87(2)(b). § 87(2)(b) was visibly injured, his pants were ripped, and he was yelling and cursing back at the bouncers. § 87(2)(b) told § 87(2)(b) to come outside. When one of the bouncers told § 87(2)(b) to close the fucking door, § 87(2)(b) started arguing with the bouncers as well. An officer in plainclothes, identified as PO Famiano, approached § 87(2)(b) from outside and told him to back the fuck up (**Allegation A**). § 87(2)(b) approached the door and swung at PO Famiano when PO Famiano placed his hand on § 87(2)(b)'s chest and moved him with his hand. § 87(2)(b) did not manage to strike PO Famiano because several individuals involving officers and bouncers jumped on § 87(2)(b) and took him to the ground.

§ 87(2)(b) was punched and kicked all over his body, but § 87(2)(b) did not know whether § 87(2)(b) was struck by bouncers or officers. § 87(2)(b) was fighting back and resisting these individuals. § 87(2)(b) was pushed and fell onto the ground, but he did not know who pushed him. § 87(2)(b) did not sustain any injuries from falling. § 87(2)(b) was handcuffed facedown on the ground by a second officer in plainclothes. § 87(2)(b) tried to intercede and attempted to pull the officers off of § 87(2)(b). PO Famiano and the second officer then pulled § 87(2)(b)'s shirt over his head and punched him in § 87(2)(b)'s head. Both officers handcuffed § 87(2)(b) who was shirtless, against a police car. § 87(2)(b) resisted and fought back with the officers. When PO Famiano yelled to get everybody, an unidentified officer handcuffed § 87(2)(b). § 87(2)(b) was placed into a marked police car and escorted to the precinct.

On January 27, 2009, § 87(2)(b) emailed photographs of the incident to Inv. Hyde including his commentary of the photos. The photographs did not have any bearing on the outcome of the allegation.

**Witness:** § 87(2)(b)

- § 87(2)(b)

### **CCRB Phone Statement**

On December 1, 2008, § 87(2)(b) provided a phone statement to the CCRB (encl. 6b). § 87(2)(b) did not have any complaint regarding the officers' conduct. Moreover, § 87(2)(b) did not hear any officer curse.

**Witness:** § 87(2)(b)

- § 87(2)(b)

### **CCRB Phone Statement**

On January 7, 2009, § 87(2)(b) provided a phone statement to the CCRB (encl. 7). § 87(2)(b) did not see any officers use physical force against any civilians. § 87(2)(b) did not allege that any officer had used profanity.

### **Attempts to Contact Civilians**

On September 4 and 24, 2009, the investigator sent two letters to § 87(2)(b). On September 17, 2009, § 87(2)(b) refused to speak with the CCRB but stated she would call the CCRB back some other time. On September 16, 2009, the investigator sent a letter to § 87(2)(b) and spoke with him on the phone. § 87(2)(b) was not able to speak with the CCRB. On September 16 and 17, 2009, the investigator spoke with § 87(2)(b) on the phone. § 87(2)(b) refused to discuss the incident and to provide her mailing address. On September 16, 2009, the investigator spoke with § 87(2)(b) refused to discuss the incident and to provide his mailing address.

### **NYPD Statement(s):**

**Subject Officer:** PO JAMES FAMIANO

- § 87(2)(b)
- Tour 1, assigned to anticrime and a black unmarked car with PO Green, dressed in plainclothes.

### **Memo Book**

PO Famiano had no entries in his memo book regarding this incident (encl. 8a-8b).

### **CCRB Statement**

On October 20, 2009, PO James Famiano was interviewed at the CCRB (encl. 8c-8d). PO Famiano denied using or hearing other officer use any profanity during the incident.

**Witness Officer:** PO MICHAEL A. GREEN

- PO Green is a § 87(2)(b).
- PO Green worked from 10 pm to 6:35 am with PO Famiano. He was assigned to anticrime with PO Eearly but was reassigned to a hospitalized crime with PO Early. He was dressed in plainclothes and assigned to RMP 4344.

### **Memo Book**

PO Green did not have any memo-book entries regarding the incident (encl. 9a-9c).

### **CCRB Statement**

On November 4, 2009, at 10:46 am, the CCRB interviewed PO Michael A. Green of the 5<sup>th</sup> Precinct (encl. 9d-9e). On November 23, 2009, at approximately 2 am, PO Green went to § 87(2)(b) Hospital. PO Green did not remember responding to a group fight or encountering PO Famiano on this date. PO Green denied

his presence at the incident location on the incident date. When PO Green was presented with photographs of § 87(2)(b) and § 87(2)(b) he did not recognize them. PO Green left the hospital at approximately 8:45 am for Manhattan Central Booking.

**Witness Officer: PO MING JUN CHEUNG**

- *PO Cheung is a* § 87(2)(b)
- PO Cheung worked from 11:15 pm to 7:50 am and was assigned to sector patrolling with PO Lew. He was dressed in uniform and assigned to RMP 1482.

**AIDED**

PO Cheung prepared AIDED for PO Famiano indicating that PO Famiano had been pushed against the wall and jumped on (encl. 12a-12e). PO Famiano suffered minor injuries and refused medical attention.

**UF 61**

2008-005-05878 complaint report indicates that § 87(2)(b) and § 87(2)(b) get into an altercation with security at 199 Bowery Street upon police arrival (encl. 12f-12g). The defendants got into a verbal dispute with PO Famiano who identified himself as a police officer with his shield and gave the defendants verbal commands. The defendants took a swing with their right closed fists toward the officer's face, pushed the officer, and jumped on top of the officer when he performed a lawful duty.

**Arrest Report**

Arrests § 87(2)(b) show that PO Chueng arrested § 87(2)(b) and § 87(2)(b) and respectively on November 23, 2009, at approximately 2:47 a.m. in front of 199 Bowery Street (encl. 12h-12p). It is alleged that § 87(2)(b) and § 87(2)(b) took a swing, pushed, and jumped on top of an officer while performing a lawful duty. The top charge against the three of them was the assault of police.

**Memo Book**

PO Cheung had the following entries in his memo book regarding the incident: "2:00 34 at 199 Bowery. 2:47 six under for assault on a police officer at 199 Bowery and further investigation. 2:50 84 at the 5<sup>th</sup> Precinct. 3:00 three under for assault on PO Famiano. 6:00 5878 complaint #§ 87(2)(b) (encl. 12q-12r)

**Court Statement**

PO Famiano informed PO Cheung that § 87(2)(b) had swung his closed fist in the direction of PO Famiano's face. § 87(2)(b) had missed PO Famiano's face but placed him in fear of substantial physical pain. Further, § 87(2)(b) and § 87(2)(b) pushed PO Famiano to the ground and jumped on top of him while he was on the ground (encl. 12s-12t).

**CCRB Statement**

On November 10, at 10:32 am, 2009, the CCRB interviewed PO Ming Jun Cheung of the 5<sup>th</sup> Precinct (encl. 12u-12v). PO Cheung did not hear any officers use profanity against any individuals.

**Witness Officer: PO JOHNSON LEW**

- *PO Lew is a* § 87(2)(b)
- PO Lew worked from 8:15 pm to 7:50 am and was assigned to patrolling with PO Cheung. He was dressed in uniform and assigned to RMP 1482.

**Memo Book**

PO Lew had the following entries in his memo book regarding the incident: "02:20 10-34 at 199 Bowery Street; spoke with a security manger about the incident to obtain information on what happened. 02:47 six

under in regards to situation. 03:30 transport of one defendant NY downtown. 06:30 call received in regards to a defendant being admitted.” (encl. 10a-10b)

### **CCRB Statement**

On November 4, 2009, at 10:52 am, the CCRB interviewed PO Johnson Lew of the 5<sup>th</sup> Precinct (encl. 10c-10d). PO Lew did not hear any officer state, “Back the fuck up.”

### **Witness Officer: SGT. FRANCISCO MUNOZ**

- *Sgt. Munoz is a* § 87(2)(b)
- On November 23, 2008, Sgt. Munoz worked from 11:05 am to 8 am as Patrol Supervisor and was assigned to RMP 1796. He was dressed in uniform and could not recall whom he worked with.

### **Memo Book**

Sgt. Munoz did not have any entries in his memo book regarding the incident (encl. 11a-11b).

### **CCRB Statement**

On November 9, 2009, at 9:11 am, the CCRB interviewed Sgt. Francisco Munzo of the 5<sup>th</sup> Precinct (encl. 11c-11d). Sgt. Munoz did not witness any verbal interaction between any officers and the arrestees.

### **NYPD Documents**

#### **Sprint**

Sprint § 87(2)(b) shows the following for 199 Bowery Street on November 23, 2009 (encl. 13a-13c). At 2:09 am, a male called 911 and stated that bouncers had been beating up his brother inside a club and would not let him out. § 87(2)(b) At 2:10 am, sector C, E, and a sergeant from the 5<sup>th</sup> Precinct responded. At 2:14 am, a female called 911, provided the address of the incident, and stated that police had arrived. § 87(2)(b). At 2:16 am, a male called 911 and stated that police at the scene had refused to take their report. He had hung up while having been transferred to a supervisor. § 87(2)(b) At 2:23 am, 5C made multiple arrests and requested that a sergeant respond. At 2:33 am, Sector 5F responded. At 2:36 am, Sector 5F transported one individual to the stationhouse, Sector 5C transported three individuals to the stationhouse, and Sector 5E transported two individuals to stationhouse. Sector 5C made 6 arrests.

Sprint § 87(2)(b) is a duplicate job number (encl. 13d). At 2:51 am, EMS responded to the stationhouse. § 87(2)(b). At 3:03 am, EMS was on the scene.

#### **Roll Call**

The roll call for tour 1 on November 23, 2009, shows that PO Famiano, PO Green, Sgt. Munoz, PO Lew, and PO Cheung worked (encl. 13h-13w). PO Famiano and PO Green were assigned to anticrime. Sgt. Munoz worked and was assigned to RMP 1543. PO Cheung and PO Lew were assigned to sector CD and RMP 1482.

#### **Prisoner Holding Pen Roster**

PHPR shows that § 87(2)(b) and § 87(2)(b) were signed in at 2:50 am by PO Cheung (encl. 13z). § 87(2)(b) was taken to the hospital at 3:30 am. § 87(2)(b) and § 87(2)(b) were signed out at 7:55 am.

#### **Arrest for Incident and Disposition**

- Searches in OCA of the NISID numbers pertaining to § 87(2)(b) and § 87(2)(b) revealed no records on file (encl. 13af-13ah).

### Status of Civil Proceedings

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- § 87(2)(b) [REDACTED]  
[REDACTED]

### Civilian(s) Criminal History

- As of December 9, 2009, Office of Court Administration records revealed no records on file for § 87(2)(b) (encl 13aj-13ak).

§ 87(2)(b) [REDACTED]

[REDACTED] (encl. 2).

### Subject Officer(s) CCRB History

- PO James Famiano has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 1).

### Conclusion

### Identification of Subject Officer

- The allegation is pled against PO Famiano because he fit the description provided by § 87(2)(b) [REDACTED]

### Allegations not Pled

- **Force against** § 87(2)(b) [REDACTED] - § 87(2)(b) [REDACTED] alleged that officers had used physical force against § 87(2)(b) [REDACTED]. Because § 87(2)(b) [REDACTED] stated that bouncers had used physical force against him, the allegation was not pleaded.
- **Force against** § 87(2)(b) [REDACTED] - Even though § 87(2)(b) [REDACTED] alleged that he had been pushed, he did not see who pushed him. Because § 87(2)(b) [REDACTED] did not allege that he had been pushed by an officer, the allegation was not pleaded.
- **Force against** § 87(2)(b) [REDACTED] - § 87(2)(b) [REDACTED] alleged that an officer used physical force against § 87(2)(b) [REDACTED]. Because § 87(2)(b) [REDACTED] stated that none of the officers used physical force against him, the allegation was not pleaded.
- **Abuse of Authority** - Because the stop of § 87(2)(b) [REDACTED] was incident to the arrest, the allegation was not pleaded.

### Investigative Findings and Recommendations

#### **Allegation A: Discourtesy - PO James Famiano spoke obscenely to § 87(2)(b) [REDACTED]**

§ 87(2)(b) [REDACTED] alleged that PO Famiano told him to back the fuck up. Based on the circumstantial evidence, PO Famiano could have stated this without anyone else hearing it besides § 87(2)(b) [REDACTED]. PO Famiano denied using any profanity during the incident. Without a witness statement or additional evidence, the investigation could not determine if PO Famiano spoke obscenely to § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]  
[REDACTED]

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Team: Eight

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date